IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

MFA.No. 1262 of 1998(B)

AGAINST THE AWARD DT. 17.6.1998 IN OP(MV).1695/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM .

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APPELLANT: APPLICANT

V.PARAMESWARAN ACHARY,
S/O.VELAYUDHAN ACHARY
ODITTA VEEDU, NEAR AMMANKOVIL,
KOCHULLOOR, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.S.REGHUNATH
SRI.MOHAN JACOB GEORGE

RESPONDENTS: RESPONDENTS
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1. **THE DEPUTY CHIEF ENGINER,**
K.S.E.B., ELECTRICAL CIRCLE OFFICE,
POWER HOUSE ROAD,
THIRUVANANTHAPURAM.

2. **A.SALAVUDEEN, S/O. ABDULKHADAR,**
VILAYIL VEEDU,
NEAR K.S.R.T.C GARAGE,
PAPPANAMCODE , THIRUVANANTHAPURAM.

3. **THE DIRECTOR,**
KERALA STATE INSURANCE DEPARTMENT,
MOTOR BRANCH,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.SREEKUMAR
SRI.K.S.ANIL, SC, KSEB
GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31 / 05/ 2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 1262 of 1998

Dated this the 31st day of May, 2007

Judgment

Koshy, J.

Appellant, while riding his scooter bearing registration No.KL-01/D 606, met with an accident on 5.8.1995 when Maruthi car bearing registration No.KBV 8361 driven by the second respondent came from the opposite side and dashed the scooter. There was fracture on the shaft of left femur middle, fracture on the head of the left femur affecting hip apart from other injuries. He underwent open reduction and internal fixation for more than one month. He was in inpatient till 6.9.1995 and was in plaster for more than three months. He continued the treatment till 5.12.1996. Permanent disability was assessed by the doctor at 12%. According to the appellant, he was getting Rs.4,000/- per month. He was working as a goldsmith and he was aged 39. Tribunal awarded a total compensation of Rs.68,250/- and found that the incident occurred due to the negligence of th driver of the vehicle insured by the third respondent

insurance company. Only quantum of compensation is disputed herein.

2. Even though Rs.4,000/- was claimed as monthly income, tribunal has taken only Rs.1,250/- per month as monthly income. The accident occurred on 5.8.1995. Even an unskilled manual worker in Kerala will get Rs.100/- per day in 1995. Notional income of a non-earning person is fixed as Rs.1,250/- in the second schedule. Here, the claimant was aged 39. He was maintaining a family from his earning. He was a goldsmith. We are of the opinion that the tribunal ought to have taken Rs.1,800/- as the monthly income. He was aged 39. The Apex Court in various cases held that second schedule can be taken as a guideline in fixing the multiplier. As per the second schedule 16 is the multiplier. However, considering the facts and circumstances of the case, we take 15 as the multiplier. The tribunal accepted the assessment of disability by the doctor which is 22% and medical certificate issued by PW3 doctor was proved and he was not cross-examined and it was unchallenged. Therefore, for 22% loss of dependency, compensation payable will be Rs.1800 x 12 x 15 x $\frac{22}{100}$ =

Rs.71,280/-. The tribunal has granted only Rs.50,000/-. Therefore, the claimant is entitled to get an additional compensation of Rs.21,280/- towards loss of earning power. Petitioner has spent Rs.38,084.65 towards medical treatment. Ext.A4 bills produced will prove the same. After going through the bills, we are of the opinion that he has actually spent Rs.29,900/- towards treatment expenses. Therefore, we award Rs.30,000/- for medical treatment. After deducting Rs.2,500/- awarded by the tribunal, compensation payable under this head will be Rs.27,500/-. Therefore, additional compensation payable will be Rs.48,780/-. The tribunal has awarded Rs.5,000/- towards actual loss of earning for four months taking Rs.1,250/- as the monthly income. Since we have taken Rs.1,800/- as the monthly income, he is entitled to get an additional amount of Rs.2,200/- more under this head for the actual loss of earning for four months. Thus, additional compensation payable to the claimant will be Rs.50,980/-. We direct the third respondent Kerala State Insurance Department to pay the above amount with 7% interest from the date of application till its deposit within three months from the date of receipt of a

copy of this judgment. On deposit of the amount, the claimant is entitled to withdraw the same.

The appeal is allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.1262/98

JUDGMENT

Dated:31st May, 2007